

## Department of Energy

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decision is made, and shall, at a minimum, state in general terms, the basis for the determination.

[61 FR 41710, Aug. 9, 1996]

### 935.070 Contract clauses.

Insert the clause at 952.235-70, Key Personnel, in research and development contracts under which performance is largely dependent on the expertise of specific key personnel. To prevent administrative burden, the list should be as limited as possible.

[49 FR 12016, Mar. 28, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

## PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### Subpart 936.2—Special Aspects of Contracting for Construction

Sec.

936.202 Specifications.

### Subpart 936.6—Architect-Engineer Services

936.602-70 DOE selection criteria.

936.609-3 Work oversight in architect-engineer contracts.

### Subpart 936.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition or Removal of Improvements

936.702 Forms for use in contracting for architect-engineer services.

### Subpart 936.71—Inspection and Acceptance

936.7100 Scope of subpart.

936.7101 Construction contracts.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12016, Mar. 28, 1984, unless otherwise noted.

### Subpart 936.2—Special Aspects of Contracting for Construction

#### 936.202 Specifications.

(a) To support all invitations for bids, plans and specifications will be available on request to all prospective bidders, including general contractors, subcontractors, and material and equipment suppliers. Where the cost of reproduction is \$10 or more, the charge

shall be a minimum of \$10 and subject to a maximum of \$500, depending upon the size of the project and the number of drawings and the volume of specifications involved. Where the cost of reproduction is less than \$10, the contracting officer has authority to make distribution at cost of reproduction, or free of charge, as a particular situation dictates.

(b) No refund for the return of plans and specifications will be made except when the invitation is canceled. Under such circumstances, refund of payments will be made upon return of the plans and specifications in good condition to the issuing office.

(c) Plans and specifications will be issued without charge to such organizations as The Associated General Contractors of America, American Road Builders' Association, Dodge Reports, Blue Reports, Brown's Letters, Inc., builders and contractors exchanges in the locality in which the project is to be constructed, and others that maintain public plan display rooms.

(d) Payments received for plans and specifications shall be handled in accordance with the regulations prescribed by the General Accounting Office in sections 3020-10 and 3030 of Title 7 of GAO Manual for Guidance of Federal Agencies.

(e) If the contracting officer desires to have the architect-engineer or construction manager handle the furnishing of plans and specifications and payments therefor, the invitations for bids should so state, and the architect-engineer or construction management contract shall provide the manner in which the receipts are to be handled, generally as a credit to the contract.

(f) No charge will be made to original receivers of plans and specifications for revised sheets of drawings and revised pages of specifications which are issued by amendments to invitations.

(g) Plans and specifications may be issued in complete sets only, or in complete sets and parts of sets, as the Head of the Contracting Activity determines to be best. If less than complete sets of plans and specifications are issued, the distribution should be based on an applicant's request for specific pages and drawing sheets.

(h) When a non-refundable fee is to be charged, a provision substantially the same as 952.236-72 shall be included in the solicitation.

[49 FR 12016, Mar. 28, 1984, as amended at 60 FR 47308, Sept. 12, 1995]

### Subpart 936.6—Architect-Engineer Services

#### 936.602-70 DOE selection criteria.

Contracting officers or architect-engineer evaluation boards shall apply the evaluation criteria contained in this subsection, as appropriate, and any special criteria developed for individual selections. When special and additional criteria are to be used, they shall be set forth in the public announcement required by 936.601, and a written justification for their use shall be placed in the DOE file maintained for the project.

(a) *General qualifications, including:*

(1) Reputation and standing of the firm and its principal members;

(2) Experience and technical competence of the firm in comparable work;

(3) Past record in performing work for DOE, other Government agencies, and private industry, including projects or contracts implemented with no overruns; performance from the standpoint of cost including cost overruns (last 5 years); the nature, extent, and effectiveness of contractor's cost reduction program; quality of work; and ability to meet schedules including schedule overruns (last 5 years) (where applicable);

(4) The volume of past and present workloads;

(5) Interest of company management in the project and expected participation and contribution of top officials;

(6) Adequacy of central or branch office facilities for the proposed work, including facilities for any special services that may be required;

(7) Geographic location of the home office and familiarity with the locality in which the project is located;

(b) *Personnel and organizations.* (1) Specific experience and qualifications of personnel proposed for assignment to the project, including, as required for various phases of the work:

(i) Technical skills and abilities in planning, organizing, executing, and controlling;

(ii) Abilities in overall project coordination and management; and

(iii) Experience in working together as a team;

(2) Proposed project organization, delegations of responsibility, and assignments of authority;

(3) Availability of additional competent, regular employees for support of the project, and the depth and size of the organization so that any necessary expansion or acceleration could be handled adequately;

(4) Experience and qualifications of proposed consultants and subcontractors; and

(5) Ability to assign adequate qualified personnel from the proposed organization (firms own organization, joint-venture organizations, consulting firms etc.) including key personnel and a competent supervising representative.

(c) Additional (or special) criteria developed for the specific project shall be considered and evaluated as may be appropriate.

#### 936.609-3 Work oversight in architect-engineer contracts.

In addition to the clause at FAR 52.236-24, the contracting officer shall insert the clause at 952.236-71 in architect-engineer contracts.

### Subpart 936.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition or Removal of Improvements

#### 936.702 Forms for use in contracting for architect-engineer services.

(a) The contracting officer shall also include the additional terms at 952.236-70 in Standard Form 252 item 6.

### Subpart 936.71—Inspection and Acceptance

#### 936.7100 Scope of subpart.

This subpart implements and supplements FAR Part 36 by prescribing the

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policies and requirements for inspection and acceptance under construction contracts.

### **936.7101 Construction contracts.**

(a) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be procured from a construction contractor with respect to its own work.

(b) When one contractor is to inspect the work of another, the inspection contractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the contract, to direct additional work, to waive any requirements of the contract, or to settle any claim or dispute. Copies of the instructions will be given to the contractor who is to be inspected, with a request to acknowledge receipt on a copy to be returned to the contracting officer. In this manner, both contractors are on express notice of the authority and limitations of the authority of the inspecting contractor.

## **PART 937—SERVICE CONTRACTING**

### **Subpart 937.70—Protective Services Contracting**

937.7040 Contract clauses.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

### **Subpart 937.70—Protective Services Contracting**

SOURCE: 58 FR 36151, July 6, 1993, unless otherwise noted.

#### **937.7040 Contract clauses.**

The contracting officer shall insert the clause at 952.237-70 entitled “Collective bargaining agreements—protective services” in all protective services solicitations and contracts involving DOE-owned facilities requiring continuity of services for public safety and national defense reasons. See also, 922.103-5, Contract clauses, which prescribes use of the clause at FAR 52.222-1, Notice to the Government of Labor Disputes.

## **PART 939—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES BY CONTRACTING**

### **Subpart 939.0—Scope of Part**

Sec.

939.001 Scope.

### **Subpart 939.1—Federal Information Resources Management Regulation (FIRMR) System**

939.101–5 Arrangement of part.

939.104–1 Deviations from the FIRMR.

939.106–3 Contracting authority and responsibilities.

### **Subparts 939.2–939.5 [Reserved]**

### **Subpart 939.6—Competition Requirements**

939.602–270 Outdated FIP equipment.

### **Subparts 939.7–939.9 [Reserved]**

### **Subpart 939.10—Specifications, Standards, and Other Purchase Descriptions**

939.1003–70 Purchase of Energy Efficient Computers (Energy Star)

### **Subparts 939.11–939.43 [Reserved]**

### **Subpart 939.44—Subcontracting Policies and Procedures**

939.4470 Contractor acquisitions of FIP resources.

### **Subparts 939.45–939.53 [Reserved]**

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 60 FR 39873, Aug. 4, 1995, unless otherwise noted.

### **Subpart 939.0—Scope of Part**

#### **939.001 Scope.**

This part sets forth the policies that apply to the contracting for Federal Information Processing (FIP) resources by the Department of Energy (DOE).

### **Subpart 939.1—Federal Information Resources Management Regulation (FIRMR) System**

#### **939.101–5 Arrangement of part.**

For consistency with the FIRMR and the FAR, part 939 is arranged in 54 sub-

parts. Within each subpart, sections and subsections are numbered to correspond to like divisions of the FIRMR where the intent of the part 939 sections and subsections is to implement the FIRMR. Where the specific section or subsection is intended to supplement the FIRMR, or where specific FIRMR coverage does not exist, the section or subsection number is assigned a number of 70 or above.

#### **939.104–1 Deviations from the FIRMR.**

(a) Only the General Services Administration (GSA) can authorize class deviations and individual deviations from the FIRMR. Within DOE, contracting officers shall submit requests for deviations from the FIRMR to the Headquarters Office of Clearance and Support for approval and subsequent processing with GSA.

(b) *Approval Requirements.* The Head of the Contracting Activity (HCA), after coordination with local counsel, shall concur in requests for deviations prior to submission to the Office of Clearance and Support. The Procurement Executive shall approve all requests for deviations prior to submission of the request to GSA.

#### **939.106–3 Contracting authority and responsibilities.**

(a) In instances where a specific acquisition delegation of procurement authority is not required under (FIRMR) 41 CFR 201–20.305–3, Specific Acquisition Delegations, each HCA may acquire FIP resources up to 50 percent of the regulatory delegation thresholds prescribed in (FIRMR) 41 CFR 201–20.305–1, Regulatory Delegations, unless different thresholds have been established either in the HCA's delegation of contracting authority, or in a specific agency delegation from GSA under (FIRMR) 41 CFR 201–20.305–2, Specific Agency Delegations of Procurement Authority (DPA); or, in internal DOE guidance documents.

(b) The contracting officer is responsible for ensuring compliance with all terms, conditions, and limitations imposed on DOE under a specific acquisition Delegation of Procurement Authority (DPA).

(c) The contracting officer shall not award a contract, or a modification to

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an existing contract, when the value of the FIP resources portion of the award, including the value of any options, exceeds DOE's delegated FIP procurement authority redelegated to the HCA by the DSO. Where the anticipated award value of the FIP resources portion of the contract, or modification to the contract, exceeds DOE's delegated procurement authority, DOE shall obtain a revised delegation from GSA prior to award. Where the anticipated award value of the FIP resources portion of the contract, or modification to the contract, exceeds the HCA's redelegated procurement authority for that acquisition, the contracting officer shall have the redelegation revised, in accordance with internal DOE guidance documents, prior to award.

### Subparts 939.2–939.5 [Reserved]

#### Subpart 939.6—Competition Requirements

##### **939.602–270 Outdated FIP equipment.**

Solicitations and contracts for, or using, outdated FIP equipment shall be submitted to the Office of Clearance and Support for review and approval. The Office of Information Management shall review these documents and make the decision whether to allow the acquisition or use of outdated FIP equipment.

### Subparts 939.7–939.9 [Reserved]

#### Subpart 939.10—Specifications, Standards, and Other Purchase Descriptions

##### **939.1003–70 Purchase of Energy Efficient Computers (Energy Star).**

Executive Order 12845, "Purchase of Energy Efficient Computers by Federal Agencies," requires agencies to acquire microcomputers, including personal computers, monitors, and printers, that meet the "Energy Star" requirements established by the Environmental Protection Agency for energy efficiency. Solicitations for microcomputers and peripheral equipment, issued after October 21, 1993, are required to include a requirement that

equipment meet the "Energy Star" standard, unless an exemption has been provided by the Head of the Contracting Activity as authorized under section 1(a) of Executive Order 12845.

### Subparts 939.11–939.43 [Reserved]

#### Subpart 939.44—Subcontracting Policies and Procedures

##### **939.4470 Contractor acquisitions of FIP resources.**

(a) *Management and operating (M&O) contracts.* Except as provided in paragraph (c) of this section, M&O contractors and their subcontractors shall not be used to acquire FIP resources unrelated to the mission of the M&O contract either for sole use by DOE employees or employees of other DOE contractors, or for use by other Federal agencies or their contractors.

(b) *Other than M&O contracts.* Where it has been determined that a contractor (other than an M&O contractor or its subcontractor) will acquire FIP resources either for sole use by DOE employees or for the furnishing of the FIP resources as government-furnished property under another contract, DOE will obtain any needed procurement authority from GSA prior to having the contractor acquire the FIP resources.

(c) *Consolidated contractor acquisitions.* When common FIP resource requirements in support of DOE programs have been identified and it is anticipated that the consolidation of such requirements will promote cost or other efficiencies, the Designated Senior Official for Information Management may authorize an M&O contractor to acquire FIP resources for use by the following:

- (1) One or more other contractor(s) performing on-site at the same DOE-owned or -leased facility as the M&O contractor, or
- (2) Other M&O contractors.

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**Subparts 939.45-939.53  
[Reserved]**

**Subpart 941.2—Acquiring Utility  
Services**

**PART 941—ACQUISITION OF UTILITY  
SERVICES**

**941.201-70 DOE Directives.**

Utility services (defined at FAR 41.101) shall be acquired in accordance with FAR part 41 and DOE Directives in subseries 4540 (Public Services).

**Subpart 941.2—Acquiring Utility Services**

Sec.

941.201-70 DOE Directives.

941.201-71 Use of subcontracts.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 61 FR 41710, Aug. 9, 1996, unless otherwise noted.

**941.201-71 Use of subcontracts.**

Utility services for the furnishing of electricity, gas (natural or manufactured), steam, water and/or sewerage at facilities owned or leased by DOE shall not be acquired under a subcontract arrangement, except as provided for at 48 CFR 970.0803 or if the prime contract is with a utility company.

## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 942—CONTRACT ADMINISTRATION

#### Subpart 942.7—Indirect Cost Rates

Sec.

942.704 Billing rates.

942.705-1 Contracting officer determination procedure.

942.705-3 Educational institutions.

942.705-4 State and local governments.

942.705-5 Nonprofit organizations other than educational and state and local governments.

#### Subpart 942.8—Disallowance of Costs

942.803 Disallowing costs after incurrence.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12026, Mar. 28, 1984, unless otherwise noted.

#### Subpart 942.7—Indirect Cost Rates

##### 942.704 Billing rates.

(b) When the contracting officer or auditor responsible for establishing billing rates, in accordance with FAR 42.704, has not established such rates or such rates are not current for the performance periods (contractor FY) under contract, the DOE contracting officer responsible for administration of the contract shall establish an appropriate rate(s) for billing purposes. If the contractor holds more than one DOE contract covering that period of performance, the DOE office with the largest unliquidated obligations as of the beginning of that performance period shall take the lead in establishing the required billing rate for use on DOE contracts. Once appropriate billing rates are established by the responsible contracting officer designated by FAR 42.704, such rates shall be adopted by the contracting officer and all billings and payments shall be retroactively revised to reflect the agreed upon rate(s).

##### 942.705-1 Contracting officer determination procedure. (DOE coverage—paragraphs (a) and (b))

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business

units for which it shall be required to negotiate final indirect cost rates. A list of such business units is maintained by the Office of Policy, within the Headquarters procurement organization.

(b) (1) Pursuant to FAR 52.216-7, Allowable Cost and Payment, contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the cognizant contracting officer responsible for negotiating their final rates.

The DOE negotiating official shall request all needed audit service in accordance with internal procedures.

[61 FR 41710, Aug. 9, 1996]

##### 942.705-3 Educational institutions. (DOE coverage—paragraph (a))

(a)(2) The negotiated rates established for the institutions cited in OMB Circular No. A-88 are distributed to the Cognizant DOE Office (CDO) assigned lead office responsibility for all DOE indirect cost matters relating to a particular contractor by the Office of Policy, within the Headquarters procurement organization.

[61 FR 41710, Aug. 9, 1996]

##### 942.705-4 State and local governments.

A list of cognizant agencies for State/local government organizations is periodically published in the FEDERAL REGISTER by the Office of Management and Budget (OMB). The responsible agencies are notified of such assignments. The current negotiated rates for State/local government activities is distributed to each CDO by the Office of Policy, within the Headquarters procurement organization.

[61 FR 41710, Aug. 9, 1996]

##### 942.705-5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A-122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards

(contracts plus federal financial assistance dollars) will be designated as the cognizant agency. There is no published list of assigned agencies. The Office of Policy, within the Headquarters procurement organization, distributes to each CDO the rates established by the cognizant agency.

[61 FR 41710, Aug. 9, 1996]

### Subpart 942.8—Disallowance of Costs

#### 942.803 Disallowing costs after incurrence.

(a) Contracting officer receipt of vouchers. Vouchers and invoices submitted to DOE shall be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted therein, the contracting officer, shall:

(1) Hold informal discussion with the contractor as appropriate.

(2) Issue a notice (letter, memo, etc.) to the contractor advising of cost disallowed or to be disallowed and advising the contractor that it may:

(i) Submit a written claim as to why the cost should be reimbursed—if in disagreement with the disallowance.

(ii) File a claim under the disputes clause, which will be processed in accordance with disputes procedures in the event disagreements cannot be settled.

(3) Process the voucher or invoice for payment and advise the finance office to deduct the disallowed cost when scheduling the voucher for payment.

(c) *Auditor reports and other sources of questioned costs.* (1) From time to time reports are received from professional auditors that may question the allowability of an incurred cost. Such reports are received as the result of auditors, in their independent role under OMB Circular A-73 or their own charters, scheduling and conducting financial or compliance audits of government contracts or as the result of an independent request for auditor service, as discussed in 942.70 Audit Services.

(2) When auditor reports or other notifications question cost or consider

them unallowable, the contracting officer shall follow up such reports and resolve all such cost issues promptly by determining, through discussions with the contractor and/or auditor within six months of the audit report date, or date of receipt if a non-Federal audit. One of the following courses of action shall be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but reject the cost questioned amount.

(iii) Reject audit findings and recommendations.

(3) When implementing the accepted course of action, the contracting officer shall—

(i) Hold discussions with the auditor and contractor as appropriate.

(ii) Issue a notice in writing advising the contractor of the government's intent to disallow the cost questioned, if the contracting officer agrees with the auditor concerning the questioned costs.

(iii) Negotiate a mutual settlement of questioned costs if they are agreed with in principle but there is a difference of opinion as to a proper amount.

(iv) Negotiate a mutual settlement of questioned costs if the auditor recommendations are acceptable to the contracting officer but the contractor does not accept the finding or disallowance.

(v) Issue a final decision of the contracting officer disallowing the questionable cost where differences cannot be resolved, advising of the contractor's right to appeal the decision, and advising the procedure to be followed if it is decided to make such an appeal.

(vi) Initiate immediate recoupment actions for all disallowed cost owed the government by:

(A) Requesting the contractor to provide a credit adjustment (offset) against amounts billed the government on the next or future invoice(s) if such shall be submitted under a contract for which the disallowed cost applies.

(B) Deducting (offset) the disallowed cost from the next or future invoice(s) submitted under the contract; if the contractor provides no adjustment



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under the contract for which the disallowed cost applies; provided such reduction is deemed appropriate.

(C) Advising the contractor that a refund shall be directly payable to the government in situations where there are insufficient payments owed by the government to effect recovery via (A) or (B) above or an offset is otherwise inappropriate.

(vii) Promptly notify the appropriate finance office of refunds directly payable to the government to ensure proper billing and follow-up action for collection.

[49 FR 12026, Mar. 28, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

### PART 944—SUBCONTRACTING POLICIES AND PROCEDURES

#### Subpart 944.3—Contractors' Purchasing Systems Reviews

Sec.

944.302 Requirements.

944.304 Surveillance.

944.305 Granting, withholding, or withdrawing approval.

944.305-1 Responsibilities.

944.307 Reports.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12031, Mar. 28, 1984, unless otherwise noted.

#### Subpart 944.3—Contractors' Purchasing Systems Reviews

##### 944.302 Requirements.

(a) The Heads of Contracting Activities shall consider whether the best interest of DOE would be served by the initiation of a Contractor Purchasing System Review (CPSR) for those contractors whose sales to DOE are expected to exceed \$5,000,000 during the next 12 months and for which DOE is the cognizant Government agency for CPSR purposes. In exceptional circumstances, consideration of a CPSR may be warranted for contractors with sales to DOE of less than \$5,000,000. When considering the initiation of a CPSR, such a review should not be conducted if the extent of the contractor's subcontracting program does not appear to justify the review.

(b) DOE contracting officers, or designees, will conduct CPSRs of DOE cog-

nizant contractors. Other Federal Agencies/Departments may be requested to conduct CPSRs, as appropriate, for other than DOE cognizant contractors. DOE contracting officers shall normally recognize other Federal Agency/Department approvals of contractors' purchasing systems within the limitation identified by approving officials of such agencies.

(c) Initial, subsequent, and follow-up review teams should include appropriate representatives from DOE field offices; other Federal Agency participation may be additionally requested as appropriate. Generally, team composition should not consist exclusively of those who have a day-to-day relationship with the contractor regarding subcontract consent or approval.

(d) The Procurement Executive is responsible for the overall conduct of the DOE CPSR program.

[49 FR 12031, Mar. 28, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

##### 944.304 Surveillance.

(b) The surveillance plan required by FAR 44.304(b) shall be approved by the Head of the Contracting Activity.

##### 944.305 Granting, withholding, or withdrawing approval.

##### 944.305-1 Responsibilities.

(a) Team findings and recommendations contained in a CPSR Report shall be approved by the Head of the Contracting Activity before the contracting officer makes a determination to continue, grant, withhold, or withdraw approval.

[49 FR 12031, Mar. 28, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

##### 944.307 Reports.

(b) Copies of CPSR reports; notifications granting, continuing, withholding, or withdrawing approval of a contractor's purchasing system; copies of recommendations for improvement of an approved system; notifications (or contract modifications) altering the subcontract consent dollar thresholds; and information received from the contractor pursuant to FAR 44.305-3(b) shall be transmitted to the Director, Office of Contractor Management and

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Administration, within the Headquarters procurement organization.

[49 FR 12031, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

### PART 945—GOVERNMENT PROPERTY

Sec.

945.000 Scope of part.

#### Subpart 945.1—General

945.101 Definitions.

945.102-70 Reporting of contractor-held property.

945.102-71 Maintenance of records.

#### Subpart 945.3—Providing Government Property to Contractors

945.303-1 Policy.

#### Subpart 945.4—Contractor Use and Rental of Government Property

945.407 Non-Government use of plant equipment.

#### Subpart 945.5—Management of Government Property in the Possession of Contractors

945.505-11 Records of transportation and installation costs of plant equipment.

945.506 Identification.

945.570-2 Acquisition of motor vehicles.

945.570-7 Disposition of motor vehicles.

945.570-8 Reporting motor vehicle data.

#### Subpart 945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

945.601 Definitions.

945.603 Disposal methods.

945.603-70 Plant clearance function.

945.603-71 Disposal of radioactively contaminated personal property.

945.607-2 Recovering precious metals.

945.608-2 Standard screening.

945.608-3 Agency screening.

945.608-4 Limited screening.

945.608-5 Special items screening.

945.608-6 Waiver of screening requirements.

945.610-4 Contractor inventory in foreign countries.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12032, Mar. 28, 1984, unless otherwise noted.

#### 945.000 Scope of part.

This part and FAR Part 45 are not applicable to the management of prop-

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erty by operating and management contractors. In addition, the policies and procedures contained in FAR Part 45 governing the management, control, reporting, and disposal of special test equipment and special tooling are not followed by the DOE.

### Subpart 945.1—General

#### 945.101 Definitions.

*Personal property*, as used in this part, means property of any kind or interest therein, except real property; records of the Federal Government; and nuclear and special source materials, atomic weapons, and by-product materials.

*Capital equipment*, as used in this part, means personal property items having a unit acquisition cost of \$5,000 or more and an anticipated service life in excess of two years, regardless of type of funding, and having the potential for maintaining their integrity as capital items; i.e., not expendable due to use.

[54 FR 27647, June 30, 1989]

#### 945.102-70 Reporting of contractor-held property.

Within 30 days after the end of each fiscal year, the Head of the Contracting Activity shall report the following information to the Director, Office of Property Management, within the Headquarters procurement organization.

(a) Name and address of each contractor with DOE property in their possession, or in the possession of their subcontractors (do not include grantees, cooperative agreements, inter-agency agreements, or agreements with state or local governments).

(b) Contract number of each DOE contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOE office, Defense Contract Management Command, or the Office of Naval Research).

(d) Date of most current appraisal of contractor's property management system, who conducted the appraisal, and status of the system (satisfactory or unsatisfactory).

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(e) Total dollar value of DOE property as reported on last semiannual asset report (including date of report), for each DOE contract administered by the contracting activity.

[49 FR 12032, Mar. 28, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

### **945.102-71 Maintenance of records.**

The contracting activity shall maintain records of approvals and reviews of contractors' property management systems, the dollar value of DOE property as reported on the most recent semiannual financial report, and records on property administration delegations to other Government agencies.

## **Subpart 945.3—Providing Government Property to Contractors**

### **945.303-1 Policy.**

The DOE has established specific policies concerning special nuclear material requirements needed under DOE contracts for fabricating end items using special nuclear material, and for conversion or scrap recovery of special nuclear material. *Special nuclear material* means uranium enriched in the isotopes U233, and U235, and/or plutonium other than PU238. The policies to be followed are:

(a) Special nuclear material will be furnished by the DOE for fixed-price contracts and subcontracts, at any tier, which call for the production of special nuclear products, including fabrication and conversion, for Government use. (The contractor or subcontractor must have the appropriate license or licenses to receive the special nuclear material. The Nuclear Regulatory Commission is the licensing agency.)

(b) Contracts and subcontracts for fabrication of end items using special nuclear material generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Head of the Contracting Activity. This approval authority shall not be further delegated.

(c) Contracts and subcontracts for conversion or scrap recovery of special nuclear material shall be of a fixed-price type, except as otherwise ap-

proved by the Head of the Contracting Activity.

[49 FR 12032, Mar. 28, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

## **Subpart 945.4—Contractor Use and Rental of Government Property**

### **945.407 Non-Government use of plant equipment.**

The type of plant equipment and dollar threshold for non-Government use of DOE plant equipment will be determined by the Head of the Contracting Activity which awarded the contract. Approval of the Head of the Contracting Activity is required to authorize non-Government use exceeding 25% of operational use.

## **Subpart 945.5—Management of Government Property in the Possession of Contractors**

### **945.505-11 Records of transportation and installation costs of plant equipment.**

The requirements of FAR 45.505-11 apply to plant equipment having a unit cost of \$1,000 or more.

### **945.506 Identification.**

The requirements of FAR 45.506 apply to Government property having a unit cost of \$1,000 or more.

### **945.570-2 Acquisition of motor vehicles.**

(a) The GSA Interagency Fleet Management System (GSA-IFMS) is the first source of supply for providing motor vehicles to contractors; however, contracting officer approval is required for contractors to utilize this service.

(b) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA-IFMS;

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA-IFMS; and

(3) A contractor can commercially lease a motor vehicle for more than 60 days.

(c) GSA has the responsibility for acquisition of motor vehicles for Government agencies. All requisitions (GSA Form 1781) shall be processed in accordance with 41 CFR 101-26.501.

(d) Contractors shall submit all motor vehicle requirements to the contracting officer for approval.

(e) The acquisition of sedans and station wagons is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards. The acquisition of light trucks is limited to those vehicles which meet the current fuel economy standards set by Executive Orders 12003 and 12375.

(f) Cost reimbursement contractors may be authorized by the contracting officer to utilize GSA Federal Supply Schedule 751, Motor Vehicle Rental, for short term rentals not to exceed 60 days, and are required to utilize available GSA consolidated leasing programs for long term (60 continuous days or longer) commercial leasing of passenger vehicles and light trucks.

(g) The Office of Property Management, within the Headquarters procurement organization, shall certify all requisitions prior to submittal to GSA for the following:

(1) The acquisition of sedans and station wagons.

(2) The lease (60 continuous days or longer) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or longer) of light trucks less than 8,500 GVWR.

(h) Purchase requisitions for other motor vehicles may be submitted directly to GSA when approved by the contracting officer.

(i) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

[49 FR 12032, Mar. 28, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

#### **945.570-7 Disposition of motor vehicles.**

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer;

however, a designated DOE official must execute the Title Transfer forms.

#### **945.570-8 Reporting motor vehicle data.**

(a) Contractors conducting motor vehicle operations shall forward annually (on or before December 1) to the contracting officer their plan for acquisition of motor vehicles for the next fiscal year for review, approval and submittal to DOE Headquarters. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Orders 12003 and 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the contracting officer, as required.

(b) Contractors operating DOE-owned and/or commercially leased (for 60 continuous days or longer) motor vehicles shall prepare and submit the following annual year-end reports to the contracting officer:

(1) DOE Report of Motor Vehicle Data (passenger vehicles).

(2) DOE Report of Truck Data.

[49 FR 12032, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

### **Subpart 945.6—Reporting, Redistribution, and Disposal of Contractor Inventory**

#### **945.601 Definitions.**

*Personal property* (See 945.101).

#### **945.603 Disposal methods.**

##### **945.603-70 Plant clearance function.**

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer shall assume all responsibilities of the plant clearance officer identified in FAR Subpart 45.6.

##### **945.603-71 Disposal of radioactively contaminated personal property.**

Special procedures regarding the disposal of radioactively contaminated property may be found at 41 CFR 109-45.50.

**945.607-2 Recovering precious metals.**

(b) Contractors generating contractor inventory containing precious metals shall identify and promptly report such items to the contracting officer for review, approval and reporting to the DOE precious metals pool. This includes all precious metals in any form, including shapes, scrap or radioactively contaminated, except for silver. Only high grade nonradioactively contaminated silver should be reported to the precious metals pool. The Oak Ridge Operations Office is responsible for maintaining the DOE pool. Precious metals scrap will be reported to the DOE precious metals pool, operated by Martin Marietta Energy Systems, M.S. 8207, P.O. Box 2009, Oak Ridge, TN 37831.

[54 FR 27648, June 30, 1989, as amended at 59 FR 9108, Feb. 25, 1994]

**945.608-2 Standard screening.**

(b)(1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Property Management Regulations 41 CFR 101-43.4801, shall be reported to the contracting office. The contracting office shall transmit this information via terminal processing or hard copy to DOE Headquarters for centralized screening in the DOE Reportable Excess Automated Property System (REAPS). Agency screening will begin when the item is first included in the REAPS monthly catalog and will end upon the issuance of the following monthly catalog.

(i) REAPS requires the inclusion of a five character address code which identifies the reporting contractor. The address code will be assigned by DOE Headquarters upon receipt of a completed Address Notification form for the contractor or DOE office reporting the property as excess.

(ii) Excess screening documents and Address Notification forms shall be submitted to the Director, Office of Property Management, within the Headquarters procurement organization by the contracting office.

[49 FR 12032, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

**945.608-3 Agency screening.**

Items shall be reported to the contracting office and should be screened informally within the contracting office's complex of contractors and with other known users of the property at other DOE locations.

**945.608-4 Limited screening.**

(a) Prior to reporting to GSA, all nonreportable property, excluding scrap and salvage, shall be reported to the contracting office for a 15 day informal screening within the contracting office's complex of contractors and other appropriate DOE field locations.

**945.608-5 Special items screening.**

Prior to reporting to GSA, that property in FAR 45.608-5 (a), (b), and (d) shall be reported and screened within DOE in accordance with 945.608-2 and 945.608-3.

(c) *Printing equipment.* All printing equipment excess to requirements shall be reported to the Office of Administrative Services, Headquarters.

**945.608-6 Waiver of screening requirements.**

(a) The Director Office of Property Management, within the Headquarters procurement organization, is the designee who may authorize exceptions from screening requirements in accordance with the provisions of FAR 45.608-6.

(b) A request to the Director of the Office of Property Management, within the Headquarters procurement organization for the waiver of screening requirements must be submitted by the HCA with a justification setting forth the compelling circumstances warranting the exception.

[54 FR 27648, June 30, 1989, as amended at 59 FR 9108, Feb. 25, 1994]

**945.610-4 Contractor inventory in foreign countries.**

Contractor inventory located in foreign countries will be utilized and disposed of in accordance with DOE-PMR 41 CFR 109-43.5, and 45.51.

[49 FR 12032, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

**PART 947—TRANSPORTATION**

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).  
 SOURCE: 49 FR 12038, Mar. 28, 1984, unless otherwise noted.

**Subpart 947.5—Ocean Transportation by U.S. Flag Vessels****947.506 Procedures.**

For contract awards involving foreign suppliers which will necessitate ocean transportation, a copy of the award document is to be furnished to the Maritime Administration at the following address: Inter-Agency Liaison, Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, SW., Washington, DC 20590

**PART 949—TERMINATION OF CONTRACTS****Subpart 949.1—General Principles**

Sec.

- 949.101 Authorities and responsibilities.
- 949.106 Fraud or other criminal conduct.
- 949.111 Review of proposed settlements.

**Subpart 949.5—Contract Termination Clauses**

- 949.501 General.
- 949.505 Other termination clauses.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12038, Mar. 28, 1984, unless otherwise noted.

**Subpart 949.1—General Principles****949.101 Authorities and responsibilities.**

The Procurement Executive shall be notified prior to taking any action to terminate (a) contracts for the operation of Government-owned facilities, (b) any prime contract or subcontract in excess of \$10 million, and (c) any contract the termination of which is likely to provoke unusual interest.

**949.106 Fraud or other criminal conduct.**

Any evidence of fraud or other criminal conduct in connection with the settlement of a contract termination shall be reported in accordance with 909.406.

**949.111 Review of proposed settlements.**

(a) The Heads of Contracting Activities shall establish settlement review boards for the review of each termination settlement or determination of amount due under the termination clause of a contract or approval or ratification of a subcontract settlement when the action involves \$50,000 or more.

(b) Settlement review boards may be established for actions below \$50,000 when considered desirable by the Head of the Contracting Activity or when specifically requested by the contracting officer.

(c) Proposed settlement agreements or determinations in excess of contractual authority of the Heads of Contracting Activities will be transmitted to the Procurement Executive for review and approval.

(d) Contracting officers shall not conclude proposed settlement or determinations until the approvals required by this subsection have been obtained.

[49 FR 12038, Mar. 28, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

**Subpart 949.5—Contract Termination Clauses****949.501 General.**

The standard clauses set forth in FAR Subpart 49.5 are applicable as prescribed subject to the cost principles referenced in the various termination articles shall be in accordance with part 931.

[49 FR 12038, Mar. 28, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

**949.505 Other termination clauses.**

(f) The clause at 952.249-70 is suggested for use in cost-plus-fixed-fee Architect-Engineer contracts.

**PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS****Subpart 950.1—General**

Sec.

- 950.104 Reports.

## Department of Energy

950.7002

### Subpart 950.70—Nuclear Indemnification of DOE Contractors

- 950.7000 Scope of subpart.
- 950.7001 General policy.
- 950.7002 Definitions.
- 950.7003 Nuclear hazards indemnity.
- 950.7004–950.7005 [Reserved]
- 950.7006 Statutory nuclear hazards indemnity agreement.
- 950.7007–950.7008 [Reserved]
- 950.7009 Fees.
- 950.7010 Financial protection requirements.

### Subpart 950.71—General Contract Authority Indemnity

- 950.7101 Applicability.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12039, Mar. 28, 1984, unless otherwise noted.

### Subpart 950.1—General

#### 950.104 Reports.

The information required by FAR 50.104(b) for all actions taken under the extraordinary emergency authority shall be submitted to the Director, Office of Clearance and Support, within the Headquarters procurement organization no later than 30 days after the date of completion of processing the action. In the event no actions were taken under Pub. L. 85-804 during the preceding calendar year, a negative report should be submitted to the Director, Office of Clearance and Support, within the Headquarters procurement organization no later than January 20 of each year.

[49 FR 12039, Mar. 28, 1984, as amended at 59 FR 9108, Feb. 25, 1994];

### Subpart 950.70—Nuclear Indemnification of DOE Contractors

#### 950.7000 Scope of subpart.

The General Services Administration (GSA) and, in some cases, the Department of Defense (DOD) Military Traffic Management Command negotiate agreements with commercial organizations to provide certain discounts to contractors traveling under Government cost-reimbursable contracts. In the case of discount air fares and hotel/motel room rates, the GSA has established agreements with certain airlines and thousands of hotels/motels to ex-

tend discounts which were previously only available to Federal employees on official travel status. DOD has negotiated agreements with car rental companies for special rates with unlimited mileage which were also to be used by only Federal employees on official Government business. GSA Federal Property Management Regulations (FPMRs) make these three travel discounts available to Government cost-reimbursable contractors at the option of the vendor.

[60 FR 30005, June 7, 1995]

#### 951.7001 General policy.

Contracting officers will encourage DOE cost-reimbursable contractors (CRCs) to use Government travel discounts to the maximum extent practicable in accordance with contractual terms and conditions. Vendors providing the service may require that Government contractor employees furnish a letter of identification signed by the authorizing contracting officer. Contracting officers shall provide CRCs with a "Standard Letter of Identification" when appropriate to do so. An example of a "Standard Letter of Identification" is at 952.251-70(e).

[60 FR 30005, June 7, 1995]

#### 950.7002 Definitions.

*DOE contractor* means any DOE prime contractor, including any agency of the Federal Government with which DOE has entered into an interagency agreement.

*Nuclear incident* means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material. The term includes any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States.

*Person indemnified* means:

(1) With respect to a nuclear incident occurring within the United States or outside the United States as the term is defined above and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability; or

(2) With respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 170d. of the Atomic Energy Act of 1954, as amended, has been extended or under any subcontract, purchase order, or other agreement, or any tier under any such contract or project.

*Public liability* means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except: (1) Claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (2) claims arising out of an act of war; and (3) whenever used in subsections a., c., and k. of section 170 of the Atomic Energy Act of 1954, as amended, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. *Public liability* also includes damage to property of persons indemnified: Provided, that such property is covered under the terms of the financial protection required, except property which is located at the site of and used in con-

nection with the activity where the nuclear incident occurs.

[49 FR 12039, Mar. 28, 1984, as amended at 50 FR 12185, Mar. 27, 1985; 56 FR 57827, Nov. 14, 1991]

#### **950.7003 Nuclear hazards indemnity.**

(a) Section 170d. of the Atomic Energy Act, as amended, requires DOE "to enter into agreements of indemnification with any person who may conduct activities under a contract with (DOE) that involve the risk of public liability \* \* \*." However, DOE contractors whose activities are already subject to indemnification by the Nuclear Regulatory Commission are not eligible for such statutory indemnity. See 950.7006 below.

(b) The Heads of Contracting Activities shall assure that contracts subject to this requirement contain the appropriate nuclear hazards indemnity provisions.

[56 FR 57828, Nov. 14, 1991, as amended at 59 FR 9108, Feb. 25, 1994]

#### **950.7004–950.7005 [Reserved]**

#### **950.7006 Statutory nuclear hazards indemnity agreement.**

(a) The contract clause contained in 952.250–70 shall be incorporated in all contracts in which the contractor is under risk of public liability for a nuclear incident or precautionary evacuation arising out of or in connection with the contract work, including such events caused by a product delivered to a DOE-owned facility for use by DOE or its contractors. The clause at 952.250–70 shall be included in contracts with architect-engineer contractors for the design of a DOE facility, the construction or operation of which may involve the risk of public liability for a nuclear incident or a precautionary evacuation.

(b) However, this clause shall not be included in contracts in which the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for activities to be performed under the contract.

[56 FR 57828, Nov. 14, 1991, as amended at 59 FR 9108, Feb. 25, 1994]



**950.7007-950.7008 [Reserved]****950.7009 Fees.**

No fee will be charged a DOE contractor for a statutory nuclear hazards indemnity agreement.

[49 FR 12039, Mar. 28, 1984, as amended at 56 FR 57828, Nov. 14, 1991]

**950.7010 Financial protection requirements.**

DOE contractors with whom statutory nuclear hazards indemnity agreements under the authority of section 170d. of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents. However, if authorized by the DOE Headquarters office having responsibility for contractor casualty insurance programs, DOE contractors may be (a) permitted to furnish financial protection to themselves or (b) permitted to continue to carry such insurance at cost to the Government if they currently maintain insurance for such liability.

[56 FR 57828, Nov. 14, 1991]

**Subpart 950.71—General Contract Authority Indemnity****950.7101 Applicability.**

(a) The DOE also has general contract authority to enter into indemnity agreements with its contractors. Under such authority a certain measure of protection is extended to the DOE contractor against risk of liability, but the assumption of liability by DOE will be expressly subject to the availability of appropriated funds. Prior to enactment of section 170 of the Atomic Energy Act 1954, as amended, this authority was exercised in a number of Atomic Energy Commission contracts and this type of indemnification remains in some DOE contracts.

(b) It is the policy of the DOE, subsequent to the enactment of section 170, to restrict indemnity agreements with DOE contractors, with respect to protection against public liability for a nuclear incident, to the statutory indemnity provided under section 170. However, it is recognized that cir-

cumstances may exist under which a DOE contractor may be exposed to a risk of public liability for a nuclear occurrence which would not be covered by the statutory indemnity.

(c)(1) While it is normally DOE policy to require its non-management and operating contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect a DOE non-management and operating contractor against liability for uninsured nonnuclear risks.

(2) It is DOE policy that, except to the extent required by the direction of the contracting officer and in the case of small, small disadvantaged and women-owned small businesses and non-profit subcontractors, management and operating contractors shall not obtain reimbursement for bonds or insurance to cover otherwise unallowable avoidable costs. M&O contractors may only be reimbursed for insurance against nonnuclear risk above the liability ceiling provided in 970.5204-55, subject to the approval of the contracting officer.

(d) If circumstances as mentioned in paragraph (b) or (c) of this section do arise, it shall be the responsibility of the Heads of Contracting Activities to submit to the Head of the Agency or designee for review and decision, all pertinent information concerning the need for, or desirability of, providing a general authority indemnity to a DOE contractor.

(e) Where the indemnified risk is nonnuclear, the amount of general authority indemnity extended to a fixed-price contractor should normally have a maximum obligation equivalent to the amount of insurance that the contractor usually carries to cover such risks in its other commercial operations or, if the risk involved is dissimilar to those normally encountered by the contractor, the amount that it otherwise would have reasonably procured to insure this contract risk.

(f) In the event that a DOE contractor has been extended both a statutory indemnity and a general authority indemnity, the general authority indemnity will not apply to the extent that the statutory indemnity applies.

(g) The provisions of this subsection do not restrict or affect the policy of DOE to pay its cost-reimbursement type contractors for the allowable cost of losses and expenses incurred in the performance of the contract work, within the maximum amount of the contract obligation.

[49 FR 12039, Mar. 28, 1984, as amended at 56 FR 28102, June 19, 1991. Redesignated and amended at 56 FR 57828, Nov. 14, 1991; 59 FR 9108, Feb. 25, 1994; 61 FR 21977, May 13, 1996]

## **PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS**

### **Subpart 951.1—Contractor Use of Government Supply Sources**

Sec.

951.101 Policy.

951.102 Authorization to use Government supply sources.

951.103 Ordering from Government supply sources.

### **Subpart 951.70—Contractor Employee Travel Discounts**

951.7002 Responsibilities.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12042, Mar. 28, 1984, unless otherwise noted.

### **Subpart 951.1—Contractor Use of Government Supply Sources**

#### **951.101 Policy.**

(a) It is DOE policy that contractors performing under cost-reimbursement contracts should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

#### **951.102 Authorization to use Government supply sources.**

(a) The Head of the Contracting Activity may authorize contractors performing under cost-reimbursement contracts and subcontractors performing under cost-reimbursement subcontracts, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR Part 51, DOE PMR 41 CFR 109-26, and any necessary ap-

proval from the agency involved. This authority may be redelegated to the level of contracting officer. Direct acquisition by the DOE, rather than by a contractor under cost-reimbursement contracts, shall be required where deemed necessary by the Head of the Contracting Activity in order to carry out special requirements of appropriation acts or other applicable laws relating to particular items.

(c)(1) The DOE central point of contact for the assignment, correction, or deletion of FEDSTRIP activity address codes is the Office of Property Management, within the Headquarters procurement organization.

(e)(4)(iii) Materials, supplies, and equipment acquired from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work, except as otherwise authorized by the Head of the Contracting Activity.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

#### **951.103 Ordering from Government supply sources.**

(b) The Procurement Executive shall be informed of instances in which GSA sources of supply are not used because of the quality of the items available from GSA or when a Federal Supply Schedule contractor refuses to honor an order.

### **Subpart 951.70—Contractor Employee Travel Discounts**

SOURCE: 54 FR 17736, Apr. 25, 1989, unless otherwise noted.

#### **951.7002 Responsibilities.**

Contracting officers will include in all cost-reimbursable solicitations and resulting contracts, or contract modifications, the provision or clause, as applicable, at 952.251-70 when significant costs involving travel by air carrier, ground transportation by rental car and lodging at a hotel or motel will be required in connection with the performance of the contract. Contracting officers may furnish Government contractors with the identification letter for presentation to contract airline,

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**951.7002**

hotel/motel or car rental firm (see 951.7001 above), depending upon the requirements of the vendor.

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### Subpart 952.0—General

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952.000 Scope of part.

952.001 General policy.

#### Subpart 952.2—Text of Provisions and Clauses

952.202 Clauses related to definitions.

952.202-1 Definitions.

952.204 Clauses related to administrative matters.

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952.204-73 Foreign ownership, control, or influence over contractor (Representation).

952.204-74 Foreign ownership, control, or influence over contractor.

952.208 Clauses related to required sources of supply.

952.208-7 Tagging of leased vehicles.

952.208-70 Printing.

952.209 Clauses related to contractor's qualifications.

952.209-70 Organizational conflicts of interest—disclosure or representation.

952.209-71 [Reserved]

952.209-72 Organizational conflicts of interest.

952.211 Clauses related to contract delivery or performance.

952.211-70 Priorities and allocations for energy programs (solicitations).

952.211-71 Priorities and allocations for energy programs (contracts).

952.211-72 Uniform Reporting System.

952.211-73 Cost and schedule control systems criteria.

952.216 Clauses related to types of contracts.

952.216-7 Allowable cost and payment.

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952.217-70 Acquisition of real property.

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952.223 Clauses related to environment, conservation, and occupational safety.

952.223-71 Safety and health (Government-owned or leased facility).

952.223-72 Radiation protection and nuclear criticality.

952.223-73 [Reserved]

952.223-74 Nuclear facility safety applicability.

952.223-75 Preservation of individual occupational radiation exposure records.

952.224-70 Paperwork Reduction Act.

952.225-70 Subcontracting for nuclear hot cell services.

952.226-70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

952.226-71 Utilization of Energy Policy Act target entities.

952.226-72 Energy Policy Act subcontracting goals and reporting requirements.

952.226-73 Energy Policy Act target group certification.

952.227 Provisions and clauses related to patents, technical data and copyrights.

952.227-9 Refund of royalties.

952.227-11 Patent rights—retention by the contractor (short form).

952.227-13 Patent rights—acquisition by the Government.

952.227-70—952.227-72 [Reserved]

952.227-73 Additional technical data requirements.

952.227-74 [Reserved]

952.227-75 Rights in technical data—long form.

952.227-76 Rights in data—special works.

952.227-77 Rights in technical data clause—short form.

952.227-78 Rights in technical data—facility.

952.227-79 Limited rights in proprietary data.

952.227-80 Technical data certification.

952.227-81 Royalty payments certification.

952.227-82 Rights to proposal data.

952.227-83 Rights in technical data solicitation representation.

952.227-84 Notice of right to request patent waiver.

952.231-70 Date of incurrence of cost.

952.233-2 Service of protest.

952.233-4 Notice of protest file availability.

952.233-5 Agency protest review.

952.235-70 Key personnel.

952.236 Construction and architect-engineer contracts.

952.236-70 Administrative terms for architect-engineer contracts.

952.236-71 Inspection in architect-engineer contracts.

952.236-72 Nonrefundable fee for plans and specifications.

952.237-70 Collective bargaining agreements—protective services.

952.245 Clauses related to Government property.

952.245-2 Government property (fixed-price contracts).

952.245-5 Government property (cost-reimbursement, time-and-materials, or labor-hour contracts).

952.247-70 Foreign travel.

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952.249 Clauses related to termination.

952.249-70 Termination clause for cost-reimbursement architect-engineer contracts.

952.250 Clauses related to indemnification of contractors.

952.250-70 Nuclear hazards indemnity agreement.

952.250-71—952.250-72 [Reserved]

952.251-70 Contractor employee travel discounts.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

SOURCE: 49 FR 12042, Mar. 28, 1984, unless otherwise noted.

### Subpart 952.0—General

#### 952.000 Scope of part.

This part implements FAR part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction), and supplements, as well as modifies, FAR part 52 by prescribing certain modifications to be made to FAR clauses when used in DOE contracts and specifying certain DOE contract clauses to be used in addition to or in place of such FAR clauses.

#### 952.001 General policy.

It is DOE policy to use the prescribed FAR and DOE contract clauses wherever practicable. Uniformity in the use of contract clauses helps to ensure impartial treatment of all contractors, expedites negotiation and contract review, and facilitates contract administration.

### Subpart 952.2—Text of Provisions and Clauses

#### 952.202 Clauses related to definitions.

##### 952.202-1 Definitions.

(a) As prescribed in (FAR) 48 CFR 902.200, insert the clause at (FAR) 48 CFR 52.202 in all contracts. The contracting officer shall substitute the following for paragraph (a) of the clause.

(a) *Head of Agency* means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

(b) The following shall be added as paragraph (d) except it will be des-

igned paragraph (c) if Alternate I of the clause is used.

(d) The term *DOE* means the Department of Energy and *FERC* means the Federal Energy Regulatory Commission.

[49 FR 12042, Mar. 28, 1984, as amended at 50 FR 12185, Mar. 27, 1985; 59 FR 9108, Feb. 25, 1994]

#### 952.204 Clauses related to administrative matters.

##### 952.204-2 Security requirements.

As prescribed in 904.404(d)(1) the following clause shall be included in contracts entered into under section 31 (research assistance) or 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended, and in other contracts and subcontracts, which involve or are likely to involve classified information.

##### SECURITY (APR 1984)

(a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the contracting officer, the contractor will complete a certificate of possession to be furnished to DOE specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the contract.

(b) *Regulations.* The contractor agrees to conform to all security regulations and requirements of DOE.

(c) *Definition of classified information.* The term *classified information* means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) *Definition of restricted data.* The term *Restricted Data* means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) *Definition of formerly restricted data.* The term *Formerly Restricted Data* means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) *Definition of National Security Information.* The term *National Security Information* means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) *Definition of Special Nuclear Material (SNM).* *SNM* means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794; and E.O. 12356.)

(j) *Subcontracts and purchase orders.* Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all

subcontracts and purchase orders under this contract.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 52 FR 38425, Oct. 16, 1987; 59 FR 9108, Feb. 25, 1994]

#### 952.204-70 Classification.

As prescribed in 904.404(d)(2), the following clause shall be included in all contracts which involve classified information.

##### CLASSIFICATION (APR 1984)

In the performance of the work under this contract, the contractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and equipment originated or generated under the contract in accordance with classification regulations and guidance furnished to the contractor by the DOE. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the contractor.

[49 FR 12042, Mar. 28, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

#### 952.204-71 Sensitive foreign nations controls.

In accordance with 904.404(d)(3), the contracting officer shall include the following clause.

##### SENSITIVE FOREIGN NATIONS CONTROLS (APR 1984)

(a) In connection with any activities in the performance of this contract, the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the contracting officer if the contractor determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If

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the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

### 952.204-72 Disclosure of information.

As prescribed in 904.404(d)(4) this clause may be used in place of the clauses entitled "Security," 952.204-2, and "Classification," 952.204-70, in contracts with educational institutions for research involving nuclear technology which could but is not expected to produce classified information or restricted data.

#### DISCLOSURE OF INFORMATION (APR 1984)

(a) It is mutually expected that the activities under this contract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or terminating of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the contractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when classified information becomes involved, or in the mutual judgment of the parties it appears likely that classified information or material may become involved. The contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract respecting termination for the convenience of the Government shall apply.

(b) The contractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.

(c) The term *Restricted Data* as used in this article means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

### 952.204-73 Foreign ownership, control, or influence over contractor (Representation).

As prescribed in 904.7005(a), insert the following provision in all solicitations for contracts subject to the provisions of 904.70.

#### FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)

(a) For purposes of this provision, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or

(4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or significant quantity of special nuclear material as defined in 10 CFR part 710 may result.

(c) If the offeror has not previously submitted responses to the following questions to DOE as part of the facility security clearance process, then it shall answer the following questions. Answer each question in either the "yes" or "no" column. If the answer is yes, furnish in detail on a separate sheet of paper all the information requested in parentheses. Copies of information which responds to these questions and which was submitted to other Government agencies may be submitted as responses to these questions if the earlier responses are accurate, complete, and current.

Question	Yes	No
1. Does a foreign interest own or have beneficial ownership in 5% of more of your organization's voting securities? ..... (Identify the percentage of any class of shares or other securities issued which are owned by foreign interests, listed by country. If you answer "Yes" and have received from an investor a copy of Schedule 13D and/or Schedule 13G filed by the investors with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)	.....	.....
2. Does your organization own 10% or more of any foreign interest? .....	.....	.....

Question	Yes	No
(Furnish the name of the foreign interest, address by country, and the percentage owned. Include name and title of officials of your organization who occupy positions with the foreign interest, if any.)		
3. Do any foreign interests have management positions such as directors, officers, or executive personnel in your organization? .....	.....	.....
(Furnish full information concerning the identity of the foreign interest and the position he/she holds in your organization.)		
4. Does any foreign interest control or influence, or is any foreign interest in a position to control or influence the election, appointment, or tenure of any of your directors, officers, or executive personnel? .....	.....	.....
(Identify the foreign interest(s) and furnish full details concerning the control or influence.)		
5. Does your organization have any contracts, binding agreements, understandings, or arrangements with a foreign interest(s) that cumulatively represent 10% or more of your organization's gross income? .....	.....	.....
(Furnish the name of the foreign interest, country, nature of agreement or involvement. Agreements include licensing, sales, patent exchange, trade secrets, agency, cartel, partnership, joint venture, proxy, etc. Give overall percentage by country as related to total income and type of services or products in general terms. If you answer "Yes" and have received from the foreign interest a copy of Schedule 13D and/or Schedule 13G filed by the foreign interest with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
6. Is your organization indebted to foreign interests? .....	.....	.....
(Furnish the amount of indebtedness as related to the current assets of the organization and identify the creditor. Include specifics as to the type of indebtedness and what, if any, collateral, including voting stock, has been furnished or pledged. If any debentures are convertible, specifics about the indebtedness, collateral, if any, and what will be received after conversion are to be furnished.)		
7. Does your organization derive any income from Communist countries included in Country Groups Q, S, W, Y, and Z in Supplement No. 1 in 15 CFR part 770? .....	.....	.....
(Discuss in detail any income derived from Communist countries, including percentage from each such country as related to total income, and the type of services or products involved.)		
8. Is 5% or more of any class of your organization's securities held in "nominee shares," in "street names", or in some other method which does not disclose beneficial owner of equitable title? .....	.....	.....

Question	Yes	No
(Identify each foreign institutional investor holding 5 percent or more of the voting stock. Identification should include the name and address of the investor and percentage of stock held. State whether the investor has attempted to, or has, exerted any management control or influence over the appointment of directors, officers, or other key management personnel, and whether such investors have attempted to influence the policies of the corporation. If you have received from the investor a copy of the Schedule 13D and/or Schedule 13G filed by the investor with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
9. Does your organization have interlocking directors with foreign interests? .....	.....	.....
(Include identifying data on all such directors. If they have a security clearance, so state. Also indicate the name and address of all other corporations with which they serve in any capacity.)		
10. Are there any citizens of foreign countries employed by, or who may visit, your offices or facilities in a capacity which may permit them to have access to classified information or a significant quantity of special nuclear material? .....	.....	.....
(Provide complete information by identify the individuals and the country of which they are citizens.)		
11. Does your organization have foreign involvement not otherwise covered in your answers to the above questions? .....	.....	.....
(Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.)		

#### Certification

( ) The offeror certifies that the entries made above are accurate, complete, and current to the best of my knowledge and belief and are made in good faith.

( ) The offeror certifies that the information requested above has previously been submitted to DOE as required for a facility security clearance and that the information is accurate, complete and current.

Date Certified \_\_\_\_\_

By \_\_\_\_\_

Offeror \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Signature and Date \_\_\_\_\_

(d) Prior to award of a contract under this solicitation, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or a significant quantity of special nuclear material in the performance of the contract. In making the determination, the contracting officer may consider a voting trust or other arrangements proposed by the offeror to mitigate or avoid



FOCI. The contracting officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) The offeror shall require any subcontractors having access to classified information or a significant quantity of special nuclear material to submit the certifications in (c) above directly to the DOE contracting officer.

(f) Information submitted by the offeror in response to the questions in (c) above is to be used solely for purposes of evaluating foreign ownership, control, or influence and shall be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

*Alternate I December 10, 1993*

If the solicitation is part of the national security program and will require access to proscribed information to enable performance, add the following notice.

NOTICE

Statute prohibits the award of a contract under a national security program to a company owned by an entity controlled by a foreign government unless a waiver is granted by the Secretary of Energy.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 56 FR 41965, Aug. 26, 1991; 58 FR 59684, Nov. 10, 1993; 59 FR 9108, Feb. 25, 1994]

**952.204-74 Foreign ownership, control, or influence over contractor.**

As prescribed in 904.7005(b), insert the following contract clause in new contracts and contract modifications to existing contracts subject to 904.70.

FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)

(a) For purposes of this clause, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or

(4) Any person who is not a U.S. citizen.

(b) *Foreign ownership, control, or influence (FOCI)* means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, spe-

cial nuclear material as defined in 10 CFR part 710, may result.

(c) For purposes of this clause, *subcontractor* means any subcontractor at any tier and the term *contracting officer* shall mean DOE contracting officer. When this clause is included in a subcontract, the term *contractor* shall mean subcontractor and the term *contract* shall mean subcontract.

(d) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

(e) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the contracting officer shall consider proposals made by the contractor to avoid or mitigate foreign influences.

(f) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

(g) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

(h) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(i) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.

(j) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by

this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

**952.208 Clauses related to required sources of supply.**

**952.208-7 Tagging of leased vehicles.**

As prescribed in 908.7101-7, insert the following clause when leasing commercial vehicles for periods in excess of 60 days.

TAGGING OF LEASED VEHICLES (APR 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the contractor shall furnish the DOE the documentation required by the State to acquire such tags.

[49 FR 12042, Mar. 28, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

**952.208-70 Printing.**

As prescribed in 908.802, insert the following clause.

PRINTING (APR 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8½ by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term *printing* includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 59 FR 9108, Feb. 25, 1994]

**952.209 Clauses related to contractor's qualifications.**

**952.209-70 Organizational conflicts of interest—disclosure or representation.**

Contracting officers shall insert the following provision in solicitations in accordance with 909.570-7.

ORGANIZATIONAL CONFLICTS OF INTEREST—DISCLOSURE OR REPRESENTATION (DEC. 1994)

(a) It is Department of Energy policy to avoid situations which place an offeror in a position where its judgment may be biased due to any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation, or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, "offeror" means the proposer or any of its affiliates or proposed consultants or subcontractors of any tier.) Therefore:

(1) As required by section 401 of Pub. L. 95-39 (42 U.S.C. 5918(a)) and section 10 of Pub. L. 95-70 (15 U.S.C. 789(a)), the offeror shall provide a statement which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work described in the statement of work of this solicitation. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of affiliates or other divisions or sections of the proposing entity and how that structure or system would avoid or mitigate an organizational conflict of interest.

(2) The proposing entity shall assure that any consultants and subcontractors, identified in its proposal, which will perform services similar to those to be performed by the proposer, *i.e.*, evaluation services or activities or technical consulting and management support services submit the same information as required by paragraph (a)(1) of this clause, either as part of the proposing entity's proposal, or directly to DOE prior to the time and date set for receipt of proposals, with identification of the solicitation and the offeror's proposal to which it relates.

(3) The proposing entity shall also assure that each of its chief officers or directors, if any, who will be directly involved in the actual performance of the contract, submit such information.

(4) The proposing entity shall promptly provide to the DOE contracting officer information concerning any changes, including additions, in its relevant facts reported under paragraph (a)(1) of this clause, that occur between the submission of its proposal and the award of the contract or the time that the proposer is notified that it is no longer under consideration for award.

(b) In the absence of any relevant interests referred to above, the offeror or others specified above, shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to the work to be performed.

(c) If the proposing entity has submitted a Securities and Exchange Commission Form 10k to that agency, it shall include a copy of the form and a list of all attachments as part of its business management proposal (or cost proposal if no business management proposal is required).

(d) The contracting officer will review the statement submitted and may require the submission of additional relevant information. All such information, and any other relevant information known to the Department, will be used to determine whether an award to the offeror may create an organizational conflict of interest with respect to the offeror's (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. If such a conflict is found to exist, the Department, at its sole discretion, may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the offeror, or (3) determine that it is otherwise in the best interest of the United States to contract with the offeror in face of an organizational conflict after including appropriate conditions mitigating such conflict.

(e) The refusal to provide the disclosure or representation and any additional information as required shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award, or if such nondisclo-

sure or misrepresentation is discovered after award, the resulting contract may be terminated for default. The offeror may also be disqualified from subsequent related Department contracts, and be subject to such other remedial action as may be permitted or provided by law or in the resulting contract. The attention of the offeror in complying with this provision is directed to 18 U.S.C. 1001.

(f) Depending on the nature of the contract activities, the offeror may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement of work, unless the solicitation specifically prohibits such exclusion. Any such proposed exclusion by an offeror shall be considered by the Department in the evaluation of proposals, and if the Department considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(g) No award shall be made until the disclosure or representation has been evaluated by the Government. Failure to provide the disclosure or representation will be deemed to be a minor informality, and the offeror shall be required to promptly correct the omission.

[59 FR 66266, Dec. 23, 1994]

#### **952.209-71 [Reserved]**

#### **952.209-72 Organizational conflicts of interest.**

The contracting officer shall include the following clause in all contracts for evaluation services or activities, technical consulting and management support services, research and development under the authority of the Federal Energy Administration Act, and other appropriate situations in accordance with 909.570-8.

##### **ORGANIZATIONAL CONFLICTS OF INTEREST (DEC. 1994)**

(a) *Purpose.* The primary purpose of this clause is to aid in ensuring that the contractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint

venturer, consultant, or in any similar capacity.

(1) *Technical consulting and management support services.* (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for technical consulting and management support services.

(ii) If the contractor under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard commercial items to the Government.

(2) *Access to and use of information.* (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not: (A) Use such information for any private purpose unless the information has been released or otherwise made available to the public; (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to

proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with subparagraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) *Disclosure after award.* (1) The contractor agrees that, if changes, including additions, to the relevant facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts relevant to the performance of this contract and did not disclose such facts to the contracting officer, DOE may terminate this contract for default.

(d) *Subcontracts.* (1) The contractor shall include this clause, including this paragraph, in contracts of any tier which involve performance of evaluation services or activities, or technical consulting and management support services as those terms are defined at 48 CFR (DEAR) 909.570-3. The terms 'contract,' 'contractor,' and 'contracting officer' shall be appropriately modified to preserve the Government's rights.

(2) If a subcontract is to be issued for evaluation services or activities, technical consulting or management support services work as defined at 909.570, the contractor shall obtain for the Department a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The contractor shall not enter into any subcontract nor engage any consultant unless the contracting officer shall have first notified the contractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of the Government.

(e) *Remedies.* For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate the contract for default, disqualify the contractor for subsequent related contractual efforts and pursue

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such other remedies as may be permitted by law or this contract.

(f) *Waiver.* Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer shall grant such a waiver in writing.

(g) *Modifications.* Prior to a contract modification when the statement of work is modified to add new work, the period of performance is meaningfully increased, or the parties to the contract are changed, the Department will request and the contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation in accordance with the instructions of the contracting officer.

[49 FR 12042, Mar. 28, 1984, as amended at 52 FR 38425, Oct. 16, 1987; 59 FR 66267, Dec. 23, 1994]

### **952.211 Clauses related to contract delivery or performance.**

#### **952.211-70 Priorities and allocations for energy programs (solicitations).**

As prescribed in 911.604(a), insert the following provision in solicitations that will result in the award of a contract in support of DOE atomic energy programs.

##### **PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (JUN 1996)**

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a ☐ DO-Rating; ☐ DX-Rating; and certified for national defense use in accordance with the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) (Contracting officer check appropriate box.).

##### *Alternate I*

As prescribed in 911.604(d), insert the following provision in solicitations in support of a program or project which may be determined to maximize domestic energy supplies:

##### **PRIORITIES AND ALLOCATIONS (DOMESTIC ENERGY SUPPLIES) (JUN 1996)**

Contracts or purchase orders awarded as a result of this solicitation may be eligible for priorities and allocations support in accordance with 10 CFR part 216 and section 101(c)

of the Defense Production Act of 1950, as amended.

[52 FR 38425, Oct. 16, 1987, as amended at 59 FR 9109, Feb. 25, 1994. Redesignated and amended at 61 FR 21977, May 13, 1996; 61 FR 30823, June 18, 1996]

#### **952.211-71 Priorities and allocations for energy programs (contracts).**

As prescribed in 911.604(b), insert the following clause in contracts and purchase orders that are placed in support of authorized DOE atomic energy programs pursuant to the Atomic Energy Act of 1954, as amended.

##### **PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (JUN 1996)**

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) in obtaining controlled materials and other products and materials needed to fill this contract.

##### *Alternate I*

As prescribed in 911.604(e), insert the following clause in contracts if they are placed in support of programs or projects which may be determined to maximize domestic energy supplies:

##### **PRIORITIES AND ALLOCATIONS (DOMESTIC ENERGY SUPPLIES) (JUN 1996)**

(a) This contract may be eligible for priorities and allocations support, as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if its purpose is determined to be to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Energy and Commerce.

(b) DOE regulations regarding material allocations and priority performance under contracts or orders to maximize domestic energy supplies can be found at part 216 of title 10 of the Code of Federal Regulations (10 CFR part 216).

(c) Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

[52 FR 38426, Oct. 16, 1987, as amended at 59 FR 9109, Feb. 25, 1994. Redesignated and amended at 61 FR 21977, May 13, 1996; 61 FR 30823, June 18, 1996]

**952.211-72 Uniform Reporting System.**

As prescribed in 904.601-71, the following clause is to be included in a contract when plans and reports are required under the Uniform Reporting System.

**UNIFORM REPORTING SYSTEM (JUN 1996)**

Contractor shall prepare and submit (postage prepaid) the plans and reports indicated on the DOE Form 1332.1, Reporting Requirements Checklist or amendments to this checklist included in this contract, to the addressees and in the specified number of copies as designated in the attachment to the checklist. The contractor shall prepare the specified plans and reports in accordance with the formats and structure set forth in DOE Order 1332.1, version in effect on the effective date of the contract. The contractor shall be responsible for levying appropriate reporting requirements on any subcontractors in such a manner to ensure that data submitted by the subcontractor to the contractor is timely and compatible with the data elements that the contractor is responsible for submitting to DOE. Plans and reports submitted in compliance with this clause are in addition to any other reporting requirements of this contract.

[52 FR 28717, Aug. 3, 1987, as amended at 59 FR 9109, Feb. 25, 1994. Redesignated at 61 FR 21977, May 13, 1996; 61 FR 30823, June 18, 1996]

**952.211-73 Cost and schedule control systems criteria.**

Certain DOE projects are of such significance and magnitude that responsible management calls for enhanced visibility of contractor cost and schedule performance as well as more formalized data to document their progress and to aid in decisions regarding their continuation. Any contract with a total estimated cost in excess of \$50 million shall require full implementation of the DOE Cost and Schedule Control Systems Criteria. Selected projects between \$2 million and \$50 million may benefit from modified implementation of such a control system. In those instances where the DOE Cost and Schedule Control System Criteria are to be utilized, the contracting officer shall provide for this by including the "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," in the solicitation and shall include the following clause in the contract.

**COST AND SCHEDULE CONTROL SYSTEMS (JUN 1996)**

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the contracting officer and within \_\_\_\_ calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the contracting officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the contracting officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the contracting officer. When contracting officer approval is required, the contracting officer shall advise the contractor of the acceptability of such changes within sixty (60) days after receipt from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the contracting officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the contracting officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or

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by the Government when requested by either the prime or subcontractor.

[49 FR 12042, Mar. 28, 1984, as amended at 56 FR 41965, Aug. 26, 1991; 59 FR 9109, Feb. 25, 1994. Redesignated at 61 FR 21977, May 13, 1996; 61 FR 30823, June 18, 1996]

### **952.216 Clauses related to types of contracts.**

#### **952.216-7 Allowable cost and payment.**

*Alternate I:* If the contract is with a non-profit organization, other than an educational institution; or a State or local government, modify the clause at FAR 52.216-7 Allowable Cost and Payment by deleting from paragraph (a) the phrase "Subpart 31.2" and substituting for it "Subpart 31.7."

*Alternate II:* When contracting with a commercial organization modify paragraph (a) of the clause at FAR 52.216-7 by adding the phrase "as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR)," after the acronym "(FAR)".

#### **952.216-15 Predetermined indirect cost rates.**

*Alternate:* As prescribed in 916.307(j), modify paragraph (c) of the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, by deleting the words "Subpart 31.3" and substituting for them "Subpart 31.6" and insert the clause in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

[49 FR 12042, Mar. 28, 1984, as amended at 59 FR 9109, Feb. 25, 1994]

#### **952.217-70 Acquisition of real property.**

Insert the following clause when required by 917.7403(c).

##### **ACQUISITION OF REAL PROPERTY (APR 1984)**

(a) Notwithstanding any other provision of the contract, the prior approval of the contracting officer shall be obtained when, in performance of this contract, the contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the contractor's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the contracting officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

#### **952.222-70 Whistleblower protection for contractor employees.**

As prescribed in 922.7101, insert the clause at 970.5204-59, in contracts other than management and operating contracts and in purchase orders, that involve work to be performed on-site at a DOE-owned or -leased facility, after adding to the end of paragraph (a) of that clause, the phrase "with respect to work performed on-site at a DOE-owned or -leased facility, as provided for at part 708."

[57 FR 57639, Dec. 4, 1993; 58 FR 39679, July 26, 1993]

#### **952.223 Clauses related to environment, conservation, and occupational safety.**

##### **952.223-71 Safety and health (Government-owned or leased facility).**

As prescribed in 923.7002 the clause set forth at 970.5204-2 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at a government-owned or leased facility where DOE has elected to assert its statutory authority to establish and enforce occupational safety and health standards applicable to the work conditions of contractor and subcontractor employees, and to the protection of the public health and safety.

[49 FR 12042, Mar. 28, 1984, as amended at 59 FR 9109, Feb. 25, 1994]

##### **952.223-72 Radiation protection and nuclear criticality.**

As prescribed in 923.7002 the clause set forth herein shall be included in those contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and

health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regulatory Commission licensing requirements (including agreements with states under section 274 of the Atomic Energy Act).

RADIATION PROTECTION AND NUCLEAR  
CRITICALITY (APR 1984)

The contractor shall take all reasonable precautions in the performance of work under this contract to protect the safety and health of employees and of members of the public against the hazards of ionizing radiation and radioactive materials and shall comply with all applicable radiation protection and nuclear criticality safety standards and requirements (including reporting requirements) of DOE. The contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the effective date of this contract or modification. In the event that the contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work. Thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984, as amended at 59 FR 9109, Feb. 25, 1994]

**952.223-73 [Reserved]**

**952.223-74 Nuclear facility safety applicability.**

The clause set forth in 970.5204-26 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at or involving the construction, startup, operation, and decommissioning of DOE-owned nuclear facilities deemed to be exempt from nuclear regulatory licensing requirements. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred to the Procurement Executive for approval. Minor changes in wording which may become necessary in negotiations may be approved by the contracting officer after consultation with the General Counsel.

**952.223-75 Preservation of individual occupational radiation exposure records.**

This clause shall be included in all contracts containing the DOE standard clause entitled "Safety and Health (Government-owned or leased facility)" at 952.223-71 or "Radiation Protection and Nuclear Criticality" at 952.223-72 or Nuclear Facility Safety Applicability at 952.223-74.

PRESERVATION OF INDIVIDUAL OCCUPATIONAL  
RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984, as amended at 59 FR 9109, Feb. 25, 1994]

**952.224-70 Paperwork Reduction Act.**

Insert the following clause if it is anticipated that information collection from 10 or more persons will be necessary under the contract.

PAPERWORK REDUCTION ACT (APR 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled



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"Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

[49 FR 12042, Mar. 28, 1984, as amended at 59 FR 9109, Feb. 25, 1994]

### **952.225-70 Subcontracting for nuclear hot cell services.**

As prescribed in 925.7004, insert the following clause in solicitations and contracts.

#### **SUBCONTRACTING FOR NUCLEAR HOT CELL SERVICES (MAR 1993)**

##### **(a) Definitions.**

*Costs related to the decommissioning of nuclear facilities*, as used in this clause, means any cost associated with the compliance with regulatory requirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission. Such costs for foreign facilities and for Department of Energy facilities are costs of decommissioning associated with the compliance with foreign regulatory requirements or the Department's own requirements.

*Costs related to the storage and disposal of nuclear waste*, as used in this clause, means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste.

*Foreign company*, as used in this clause, means a company which offers to perform nuclear hot cell services at a facility which is not subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

*Nuclear hot cell services*, as used in this clause, means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assemblies, or other components that are emitting large quantities of ionizing radiation, after discharge from nuclear reactors, which are performed in specialized facilities located away from commercial nuclear power plants, generally referred to in the industry as "hot cells."

*Nuclear waste*, as used in this clause, means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy, or in the case of foreign offers, by comparable foreign organizations.

*United States company*, as used in this clause, means a company which offers to perform nuclear hot cell services at a facility subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

(b) In selecting a competitive offer for a first-tier subcontract acquisition of nuclear hot cell services, the contractor shall (1) con-

sider neither costs related to the decommissioning of nuclear waste facilities nor costs related to the storage and disposal of nuclear waste, or (2) add these costs to offers of foreign companies, if—

(i) one or more of the offers is submitted by a United States company and includes costs related to the decommissioning of nuclear facilities and costs related to the storage and disposal of nuclear waste because it is subject to such cost; and

(ii) one or more of the offers is submitted by a foreign company and does not include these types of costs. (A foreign company might not be subject to such costs or might not have to include these types of cost in its offer if the firm is subsidized in decommissioning activity or storage and disposal of nuclear waste, or a foreign government is performing the activities below the actual cost of the activity.)

(c) Upon determining that no offer from a foreign firm has a reasonable chance of being selected for award, the requirements of this clause will not apply.

[58 FR 8911, Feb. 18, 1993; 58 FR 39679, July 26, 1993]

### **952.226-70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.**

As prescribed in 926.7007(a), insert the following provision:

#### **SUBCONTRACTING GOALS UNDER SECTION 3021(a) OF THE ENERGY POLICY ACT OF 1992 (PUB. L. 102-486) (JUN 1996)**

(a) *Definition*.—Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the criteria of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined by the Secretary of Education to be Historically Black Colleges and Universities pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Section 3021 of the Energy Policy Act (Pub. L. 102-486) establishes a goal of award of 10 percent of the contract dollar value for

prime and subcontract Energy Policy Act awards to Energy Policy Act target groups.

(c) The offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small, Small Disadvantaged and Women-Owned Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the three Energy Policy Act target groups. Individual goals shall be expressed in terms of a percentage of the offeror's proposed contract dollar value. In addition, the offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and, if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small, Small Disadvantaged and Women-Owned Subcontracting Plan.

(End of provision)

[60 FR 22301, May 5, 1995, as amended at 61 FR 21977, May 13, 1996; 61 FR 30823, June 18, 1996]

#### **952.226-71 Utilization of Energy Policy Act target entities.**

As prescribed in 926.7007(b), insert the following clause:

##### **UTILIZATION OF ENERGY POLICY ACT TARGET ENTITIES (JUN 1996)**

(a) *Definition.*—Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) *Obligation.* In addition to its obligations under the clause of this contract entitled Utilization of Small Business, Small Disadvantaged and Women-Owned Small Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.

(End of clause)

[60 FR 22301, May 5, 1995, as amended at 61 FR 21977, May 13, 1996; 61 FR 30823, June 18, 1996]

#### **952.226-72 Energy Policy Act subcontracting goals and reporting requirements.**

As prescribed in 926.7007(c), insert the following clause:

##### **ENERGY POLICY ACT SUBCONTRACTING GOALS AND REPORTING REQUIREMENTS (JUN 1996)**

(a) *Definition.*—Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) *Goals.*—The contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities:

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: \* \* \* percent;

(2) Historically Black colleges and universities: \* \* \* percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: \* \* \* percent.

[\* \* \* These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

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(c) *Reporting requirements.* (1) The contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the contracting officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Subcontracting Plan, the contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

[60 FR 22302, May 5, 1995, as amended at 61 FR 21977, May 13, 1996; 61 FR 30823, June 18, 1996]

### **952.226-73 Energy Policy Act target group certification.**

As prescribed in 926.7007(d), insert the following provision:

#### ENERGY POLICY ACT TARGET GROUP CERTIFICATION (JUN 1996)

(a) *Certification.*—The offeror certifies that it is:

(1) \_\_\_An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) \_\_\_An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) \_\_\_A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) By submission of an offer, the offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the contracting officer that the offeror is an en-

tity from the Energy Policy Act target group identified.

(End of provision)

[60 FR 22302, May 5, 1995; 61 FR 30823, June 18, 1996]

### **952.227 Provisions and clauses related to patents, technical data and copyrights.**

#### **952.227-9 Refund of royalties.**

As prescribed in 927.206-2, insert the following clause:

##### REFUND OF ROYALTIES (MAR 1995)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term *royalties* as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part

from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause)

[60 FR 11817, Mar. 2, 1995]

**952.227-11 Patent rights—retention by the contractor (short form).**

As prescribed in 927.303(a), insert the following clause:

**PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM) (MAR 1995)**

**(a) Definitions.**

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) *Made* when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm* means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Subject invention* means any invention of the contractor conceived or first actually re-

duced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) *Agency licensing regulations and agency regulations concerning the licensing of Government-owned inventions* mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Contractor.* (1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein

valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor and protection of the Contractor right to file.* (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical

application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a

patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) *Subcontracts.* (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it

nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors

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(when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) *Communications.* (1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) A report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) A report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

(End of clause)

[60 FR 11817, Mar. 2, 1995]

### **952.227-13 Patent rights—acquisition by the Government.**

As prescribed at 927.303(c), insert the following clause:

#### **PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (MAR 1995)**

##### *(a) Definitions. T1*

*Invention*, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

*Practical application*, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

*Subject invention*, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

*Patent Counsel*, as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

*DOE patent waiver regulations*, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award of this contract.

*Agency licensing regulations and applicable agency licensing regulations*, as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) *Allocations of principal rights.* (1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph